PS LA 2012/1 - Engagement of Tax Counsel Network on high risk technical issues

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Engagement of Tax Counsel Network on high risk technical issues

This Law Administration Practice Statement outlines when and how to engage officers of Tax Counsel Network on high risk technical issues.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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1. What is this practice statement about?

This practice statement sets out the guiding principles behind the referral of high risk technical issues[1] to Tax Counsel Network (TCN) and the appropriate level of engagement of TCN officers on those issues.

2. When is it mandatory to engage TCN?

You are required to engage as early as possible, in relation to the following:

- the application of Part IVA or section 45B of the *Income Tax Assessment Act 1936* or the application of the general anti-avoidance provisions of any other tax legislation or of any other tax legislation
- strategic litigation
- public rulings (except annual, class and product rulings)
- matters where, during a compliance process, no change in the ATO position is identified but the affected taxpayer maintains that the ATO view should only be applied prospectively pursuant to Law Administration Practice Statement PS LA 2011/27 *Determining whether the ATO's view of the law should be applied prospectively only*.

3. In what circumstances is 'engagement' based solely on level of risk?

Business lines must assess the risk associated with technical issues in accordance with the ATO's Risk Management Framework matrix. That risk matrix is based upon six categories of risk – low, moderate, significant, high, severe and catastrophic. Where the risk is assessed, according to that matrix, as significant and above, the business line must engage TCN.

4. How do I engage TCN?

The standard procedure to engage TCN is through the technical engagement process. You need to complete a technical engagement template and forward it to the Work Allocation Reporting and Monitoring (WARM) team mailbox.

Where the matter is urgent, direct contact with a TCN officer may be desirable, but the matter should also be referred through WARM.

TCN officers may also be engaged on an informal basis to assist with matters such as risk assessment and issue identification. If the matter does not occupy more than two hours of the TCN officer's time, it will not be necessary for the business line officer to lodge an engagement template with WARM.

5. How can we ensure TCN independence?

If TCN is engaged on an objection, the responsible TCN officer must not have been involved in the matter at an earlier stage.

6. Where can I find more information on engaging TCN?

The *Guide to managing high risk technical issues* contains more detailed advice and instruction on risk assessment and the methods of engagement of TCN.

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[1] In this practice statement, the words 'high risk' are used in a generic sense and not as a reference to a particular risk matrix level. How this practice statement applies across specific risk matrix levels is explained in the *Guide to managing high risk technical issues*. A technical issue consists of a question or series of questions of an interpretive nature.

7. More information

For more information, see:

- PSLA 2011/27 *Determining whether the ATO's view of the law should be applied prospectively only*
- Risk Management Framework
- How to engage Tax Counsel Network (TCN) - technical engagement process
- Guide to managing high risk technical issues

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